IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.E.A. No.118 of 2006 (O&M)
Date of decision: November 20, 2006

Commissioner of Central Excise Commissionerate, Jalandhar.

-----Appellant

Vs.

M/s Mukerian Paper Ltd., G.T. Road, Mukerian (Pb.).

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mrs. Daya Chaudhary, Assistant Solicitor General of India for the appellant.

ORDER:

This appeal has been preferred under Section 35(G) of the Central Excise Act, 1944 (for short, "the Act") by revenue against the order dated 26.08.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (Annexure P-3), proposing following substantial question of law:-

> "Whether the Tribunal is correct in allowing credit utilized by the parties before availing exemption Notification No.6/2000 based on quantity of clearances, when the same credit relates to inputs lying in stock or used in finished excisable goods lying in stock on the date when the option for exemption was exercised especially in view of specific provisions Rule 57 AG of the Central Excise Rules, 1944?

The assessee was availing the benefit of Notification No.6/2000-CE, which provided nil rate of duty in respect of their finished goods.

A show-cause-notice was issued to the assessee, asking for reversal of credit in respect of inputs lying in stock under process when the assessee started clearing goods without payment of duty. After hearing the assessee, the demand of duty was confirmed. The assessee was also required to pay interest and penalty.

On appeal, the appellate authority upheld the demand of duty, but reduced the quantum of penalty. The assessee preferred an appeal before the Tribunal, which has been dismissed. The Tribunal observed:-

> "In respect of the credit taken on the inputs during the period when the appellants were clearing the goods under exemption notification, they are not contesting this demand. However, they are only asking for the credit in respect of the inputs lying in stock, under process and contained in the finished goods lying in stock on the date when they started clearing the goods again on payment of duty. As per the provisions of Rule 57AG of Central Excise Rules, a manufacturer is entitled to take credit in respect of the inputs lying in stock, under process and contained in finished goods when they started paying duty. This issue was never raised by the appellant before the lower authorities. Therefore, in these circumstances, the appellant, if so advised they can approach the appropriate authorities for such relief and the authority will decide in accordance with law. Keeping in view the facts and circumstances of the case, in view of penalty, the appellant violated the provisions of Central Excise Rules, therefore, they are liable for penal action. Keeping in view the facts and circumstances of the case the penalty is reduced to Rs. One lakh in the case of M/s Oswal Paper & Allied and in the other case of M/s Mukerian Paper Ltd., the penalty is only Rs. 50,000/- and it does not call for further reduction. The appeals are disposed of as indicated above."

Counsel for the revenue was not able to substantiate as to how the revenue was aggrieved against the order passed by the Tribunal on the issue sought to be raised in the present appeal when the assessee himself had admitted before the Tribunal that demand for the period the assessee was under exemption notification was not being contested. Accordingly, we find no merit in the appeal.

Learned counsel for the revenue then submitted that penalty equal to the amount of duty was mandatory.

This Court has already upheld such a contention in judgment rendered on 21.07.2006 in ***Commissioner of Central Excise, Delhi-IV*** **v.** ***M/s Illpea Paramount Pvt. Limited,*** C.E.A. No.56 of 2006.

However, we find that in the present case, the revenue did not prefer any appeal before the Tribunal and was, thus, not aggrieved by the order of the appellate authority which had reduced the penalty. The Tribunal has not given any relief to the assessee, by which, the revenue may be aggrieved.

In view of above circumstances, we are unable to hold that any substantial question of law arises for consideration.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 20, 2006
ashwani

(RAJESH BINDAL)
JUDGE